



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Star Automotive Group

Case No: DOT-15-0030

FINAL DECISION

On October 9, 2015, John and Lisa Lazore filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Star Automotive Group (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Oshkosh Northwestern, a newspaper published in Oshkosh, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by March 25, 2016. No additional claims were filed. John and Lisa Lazore's claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on May 11, 2016. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

John and Lisa Lazore
N6481 Cedar Valley Road
Fredonia, WI 53021

Donald Krasavage
Star Automotive Group
2140 West County Road Y
Oshkosh, WI 54904

William Haese
Star Automotive Group
6875 Wentzel Shore Road, #6
Winneconne, WI 54986

Auto Owners Insurance Company
PO Box 30660
Lansing, MI 48909

Findings of Fact

1. Star Automotive Group (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 2345 Bowen Street, Oshkosh, Wisconsin. The Dealer was placed out of business effective July 21, 2015.

2. The Dealer had a bond in force a bond satisfying the requirements of Wis. Stat. § 218.0114(5) from July 15, 2013, until it was cancelled effective October 2, 2015. (Bond # 66162781 from Auto Owners Insurance Company)

3. On April 11, 2015, John and Lisa Lazore (Lazores) purchased a 2000 Volkswagen Beetle automobile, vehicle identification number 3VWDD21C0YM443930, from the Dealer. According to the purchase contract, the Lazores paid \$2,664.50, including tax and registration fees, for the vehicle.

4. After purchasing the vehicle, the Lazores took it to their mechanic, M & R Service Center, Inc., in Cedar Grove, Wisconsin, to have it checked over. The Lazores' mechanic recommended a list of repairs and maintenance for the vehicle. The work done to the Lazores vehicle included new tires, replacing the air filter, tie rod ends, shock absorbers and struts, brake pads, rotors, and calipers, water pump, cooling fan control module, and the oil dipstick. The mechanic also performed a 4 wheel alignment on the vehicle. The total bill for the new parts, repairs, and maintenance was \$3,034.15.

5. On June 5, 2015, the Lazores filed a complaint with the Department's — Dealer Section against the Dealer. The complaint stated that the vehicle "had a lot of hidden problems" and that they had not received the title or license plates for it. The investigator assigned to handle the complaint coincidentally had been trying to physically locate the vehicle purchased by the Lazores. The vehicle was owned by another motor vehicle dealer who had taken it to Star Automotive for repairs and detailing. Star Automotive had then sold it to the Lazores without the other motor vehicle dealer's consent.

6. As of July 21, 2015, Star Automotive was out of business. The investigator was able to mediate a resolution of the Lazores' title complaint by encouraging the motor vehicle dealer that owned the vehicle to file a loss claim with his insurance company. The insurance company paid the claim, the motor vehicle dealer sent the title to the insurance company, and then the insurance company released the title to the investigator. The investigator was able to process an application for a Wisconsin title and registration for the vehicle in the Lazores' name.

7. On October 9, 2015, the Lazores filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$3,034.15, the amount they spent on repairs, new parts, and maintenance for the vehicle after they purchased it.

8. There is no requirement that a used vehicle be free of any mechanical problems or defects when sold by a motor vehicle dealer. However, licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to conduct a reasonable pre-sale inspection and disclose any “significant existing mechanical defects” discovered during the pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale.¹

9. The Lazores have not provided sufficient documentation for their claim. They did not submit a copy of the Wisconsin Buyers Guide to show whether the Dealer disclosed any problems or defects with the vehicle at the time he offered it for sale. Additionally, there is no evidence that they experienced any problems with the vehicle. The repair invoice states they brought it to their mechanic for a “spring vacation check” suggesting that they did not have any specific complaints about the performance of the vehicle. On their complaint against the Dealer, the Lazores stated that the “car had a lot of hidden problems” further suggesting that the items repaired by M & R Service Center would not have been discovered during a reasonable presale inspection of the vehicle. Several of the items on the invoice, such as new tires and an air filter, appear to be maintenance, not significant mechanical defects.

10. The only apparent violation committed by the Dealer in this transaction is that he sold a vehicle to a retail customer that he did not own. However, the Department’s investigator was able to mediate a resolution of this violation that resulted in the Department issuing a clean Wisconsin title and registration for the vehicle to the Lazores. The victims of this violation are the motor vehicle dealer that owned the vehicle and/or the insurance company that paid his loss claim. Because the investigator was able to resolve the title problem, the Lazores did not sustain a loss as the result of this violation.

11. The Lazores filed a bond claim within three years of the ending date of the period the Auto-Owners Insurance Company bond was in effect and it is, therefore, a timely claim.

Discussion

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

¹ Wis. Admin. Code § Trans 139.04(4) provides:

Used motor vehicle general condition disclosure. Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care.

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the Lazores' claim against the Dealer's surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. The Lazores spent a significant amount of money on new parts, repairs, and maintenance on the vehicle after they purchased it. However, as found above, they have not shown that the Dealer either failed to perform a reasonable presale inspection of the vehicle or to disclose the results of the presale inspection on a Wisconsin Buyers Guide displayed on the vehicle when it was offered for sale. The only violation established by the documentation in the record is the Dealer's unlawfully selling a vehicle that he did not own. The Lazores did not sustain a loss as a result of this violation.

Conclusions of Law

1. The claim of John and Lisa Lazore arose on April 11, 2015, the day they purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on July 15, 2014. The claim arose during the period covered by the surety bond.

2. John and Lisa Lazore filed a claim against the motor vehicle dealer bond of the Dealer on October 9, 2015. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. John and Lisa Lazore have not supplied documentation to support an allowable claim against the surety bond of Dealer pursuant to Wis. Admin. Code § Trans 140.21.

4. The Division of Hearings and Appeals has authority to issue the following order.

Order

The claim filed by John and Lisa Lazore against the motor vehicle dealer bond of Star Automotive Group is DENIED.

Dated at Madison, Wisconsin on June 14, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
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By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.